

2003 Legislation That Affects The Water Pollution Control Board

The following is a synopsis of legislation from the 2003 session of the Indiana General Assembly that affects the Water Pollution Control Board. Included are: 1) a new rulemaking requirement; 2) a new rulemaking restriction; 3) changes to rulemaking procedures; and 4) changes to board procedures. There were no new rulemaking authorities for the Water Pollution Control Board.

NEW RULEMAKING REQUIREMENTS:

Water Body Designations—Antidegradation of Designated Waters

[HEA 1221](#) (P.L. 231-2003)

SECTION 4; Noncode

Effective December 31, 2000 (retroactive)

Expires the earlier of July 1, 2006 or the effective date of the rule amendments adopted by the Water Pollution Control Board

- This provision regarding antidegradation of outstanding state resource waters and exceptional use waters, re-enacts an expired provision from SEA 431, passed in 2000, that directs the Water Pollution Control Board to amend existing rules.
- All waters designated as outstanding state resource waters or exceptional use waters are to be maintained and protected. For new or increased discharges in waters designated as outstanding state resource waters or exceptional use waters, an overall improvement in water quality in the water must be demonstrated and is subject to IDEM approval.
- All waters designated as outstanding state resource waters within the Great Lakes system shall be maintained and protected in their present quality in accordance with the antidegradation implementation procedures for outstanding state resource waters established by the Water Pollution Control Board.
- Any rule adopted by the Water Pollution Control Board before December 31, 2000 is void to the extent that it is inconsistent with this provision, or requires protection of waters beyond the protection required by 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2).
- Before July 1, 2004, the Water Pollution Control Board shall amend specified existing rules to reflect this provision.

Water Body Designations—Exceptional Use Waters

[HEA 1221](#) (P.L. 231-2003)

SECTION 5; Noncode

Effective December 31, 2002 (retroactive)

Expires July 1, 2006

- This provision regarding exceptional use waters, re-enacts an expired provision from SEA 431, passed in 2000, that directs the Water Pollution Control Board to adopt rules.
- Until July 1, 2004, the following apply to a water body that is designated as an exceptional use water before October 1, 2002 :
 - 1) The water body is subject to the overall water quality improvement provisions of IC 13-18-3-2(1).
 - 2) The water body is not subject to a standard of having its water quality maintained and protected without degradation consistent with the provisions of SEA 431, passed in 2000.
- Before July 1, 2004, the Water Pollution Control Board must:
 - 1) determine (effective July 1, 2004) whether to designate each exceptional use water (that was designated as such before October 1, 2002) as an outstanding state resource water; and

- 2) complete a rulemaking to make any designation of an exceptional use water as an outstanding state resource water.

NEW RULEMAKING RESTRICTION:

Rulemaking Restrictions For Steel Mills And Foundry Industries

[HEA 1221](#) (P.L. 231-2003)

SECTION 6; Noncode

Effective May 8, 2003

Expires July 1, 2005

- The Air Pollution Control Board, Water Pollution Control Board, and Solid Waste Management Board are prohibited from adopting a new rule, and IDEM is prohibited from adopting a new policy, before July 1, 2005, if the new rule or policy would require certain types of industries to comply with a standard of conduct that exceeds the standard established in a related federal regulation or regulatory policy.
- This provision applies to certain steel, iron, aluminum, copper, and nonferrous foundries and steel mills that function under specified primary Standard Industrial Classification (SIC) codes, and that experienced at least a 10% job loss or a 10% decline in production in calendar years 2001 and 2002.

NEW RULEMAKING PROCEDURES:

Additional Requirements for Rules that Exceed Federal Standards

[HEA 1671](#) (P.L. 240-2003)

SECTION 4; Amends IC 13-14-9-3

Effective July 1, 2003

SECTION 5; Amends IC 13-14-9-4

Effective July 1, 2003

SECTION 8; Amends IC 13-14-9.5-1.1

Effective July 1, 2003

SECTION 13; Noncode subsection (b)

Effective July 1, 2003

Expires January 1, 2004

- For a first notice of a public comment period in the Indiana Register, the description of the subject matter and purpose of the proposed rule is expanded to include the following:
 - 1) A statement indicating whether each alternative is imposed under federal law.
 - 2) A statement explaining how each alternative that is not imposed under federal law differs from federal law.
 - 3) Any information known to IDEM about the potential fiscal impact of each alternative that is not imposed under federal law.
- For a second notice of a public comment period in the Indiana Register and for rules under the 7-year sunset provision, the information provided in the notice is expanded to include the following:
 - 1) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law.
 - 2) With respect to each element identified, identify:
 - A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;
 - B) examples in which federal law is inadequate to provide the protection; and
 - C) the estimated fiscal impact and expected benefits based on the extent to which the proposed rule exceeds the requirements of federal law.
 - 3) For any element of the proposed rule that imposes a restriction or requirement that is not imposed under federal law, describe the availability for public inspection of all materials relied upon by IDEM in the development of the proposed rule, including, if applicable:
 - A) health criteria
 - B) analytical methods

- C) treatment technology
- D) economic impact data
- E) environmental assessment data
- F) analyses of methods to effectively implement the proposed rule
- G) other background data
- These provisions apply to proposed rules for which IDEM provides notice of the first public comment period in the Indiana Register after June 30, 2003.

Fiscal Analyses of Rules

[HEA 1671](#) (P.L. 240-2003)

SECTION 2; Amend IC 4-22-2-28 *Effective July 1, 2003*

SECTION 6; Adds IC 13-14-9-4.2 *Effective July 1, 2003*

SECTION 7; Amends IC 13-14-9-4.5 *Effective July 1, 2003*

SECTION 13; Noncode subsection (b) *Effective July 1, 2003 Expires January 1, 2004*

- IDEM is required to give written notice to Legislative Services Agency of the proposed date of preliminary adoption of the proposed rule not less than 66 days before that date.
- Legislative Services Agency shall prepare the fiscal analysis not later than 21 days before the proposed date of preliminary adoption of the proposed rule.
- Not less than 14 days before the date of preliminary adoption of a proposed rule by a board, IDEM must make available to the board the fiscal analysis prepared by Legislative Services Agency.
- When publishing a third notice of a public comment period in the Indiana Register, the fiscal analysis must also be included.
- These provisions apply to proposed rules for which IDEM provides notice of the first public comment period in the Indiana Register after June 30, 2003.

NEW BOARD PROCEDURES:

Public Input on Nonrule Policy Documents

[HEA 1671](#) (P.L. 240-2003)

SECTION 3; Amends IC 13-14-1-11.5 *Effective July 1, 2003*

SECTION 13; Noncode subsection (a) *Effective July 1, 2003 Expires January 1, 2004*

- Before presenting a proposed nonrule policy document to the appropriate board, IDEM must make the following information available to the public at least 45 days before the presentation, including posting the information on the IDEM web site:
 - 1) The proposed nonrule policy document.
 - 2) Information on the availability for public inspection of all materials relied upon by IDEM in the development of the proposed nonrule policy document, including, if applicable:
 - A) health criteria
 - B) analytical methods
 - C) treatment technology
 - D) economic impact data
 - E) environmental assessment data
 - F) other background data
 - 3) The date, time, and location of the presentation to the appropriate board.
 - 4) Information regarding the opportunity for a person to comment to IDEM and the appropriate board on the proposed nonrule policy document before or at the time of the presentation.
- IDEM must provide to the appropriate board at the time of the presentation, a copy of all comments made.

- These new requirements apply to proposed nonrule policy documents presented to a board after June 30, 2003.

EQSC Study of Environmental Rulemaking Process and Board Membership

[HEA 1671](#) (P.L. 240-2003)

SECTION 12; Noncode

Effective May 8, 2003

Expires January 1, 2004

- Before November 1, 2003, the Environmental Quality Service Council (EQSC) is directed to do the following:
 - 1) Consider whether the rulemaking operations of the Air Pollution Control Board, the Water Pollution Control Board, and the Solid Waste Management Board are sufficiently independent of the influence of IDEM and other state agencies or entities.
 - 2) Consider the overall efficiency of rulemaking operations of the boards.
 - 3) Submit its final report on these matters to the Governor and the executive director of Legislative Services Agency.

Office of Environmental Adjudication Notification of Final Orders to Environmental Boards

[HEA 1671](#) (P.L. 240-2003)

SECTION 1; Amends IC 4-21.5-7-3

Effective May 8, 2003

- The Office of Environmental Adjudication is directed to notify the Air Pollution Control Board, the Water Pollution Control Board, the Solid Waste Management Board, or the Financial Assurance Board of a final order of the Office of Environmental Adjudication that interprets a rule of the respective board, or a statute under which a rule of the board is authorized.